

SPAIN

DISCRETION WITHOUT BOUNDS: The Arbitrary Application of Spanish Immigration Law

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INTRODUCTION

Human Rights Watch is concerned that the Spanish authorities' implementation of Spanish Law 8/2000 (Regarding the Rights and Freedoms of Foreign Nationals Living in Spain and their Social Integration) and the law's Regulations for the Application of Spanish Law on Foreign Nationals¹ contravenes national, regional, and international standards for the treatment of migrants. Although Law 8/2000 is a national law applicable to migrants in all of Spain's autonomous regions, the lack of coordination among ministries and the inconsistent implementation among different regions result in significant variations in the treatment of migrants. The outcome is arbitrary treatment of migrants in violation of international and regional human rights standards.

A migrant arriving in Ceuta, for example, will likely be sent as a matter of course to the mainland with an expulsion order that, while unenforceable, renders him or her illegal and unemployable in Spain. Rarely will he or she enjoy the opportunity to put forward a claim for legal stay in Spain, regardless of his or her particular circumstances, including any claim he or she may have for asylum. In Melilla, on the other hand, the same migrant might be sent to the peninsula with a valid residence and work permit or deported to Morocco by a repatriation process that is no longer legally applicable. And in the Canary Islands, this migrant would probably be detained for up to forty days in substandard conditions and by a process that violates domestic, regional, and international standards, and then he or she would either be deported to his or her country of origin or, more likely, released onto the streets of Las Palmas to live illegally.

The problems associated with the arbitrary application of the law are exacerbated by serious violations of migrants' procedural rights, including their rights to legal assistance, translation services, individualized consideration of their cases, access to asylum determination procedures,² and appellate review of decisions affecting their legal status in Spain. In the case of certain migrant groups, particularly Algerians, the lack of formal identification procedures has promoted the use of unreliable, arbitrary, and possibly discriminatory decision-making processes.

The Spanish government should urgently develop effective mechanisms for clarifying, improving, and monitoring the law's implementation. Such mechanisms should address the apparent tendency among some

¹ Organic Law 8/2000 of 22 December, Reforming Organic Law 4/2000 of 11 January, Regarding the Rights and Freedoms of Foreign Nationals Living in Spain and their Social Integration) [Law 8/2000]; Royal Decree 864/2001 of 20 July, approving Regulations for the Application of Spanish Organic Law 4/2000, of 11 January, on the rights and liberties of foreigners in Spain and their social integration, reformed by Organic Law 8/2000 of 22 December [Regulation].

Spanish Law 8/2000 regulates the rights and freedoms of all foreigners—persons without Spanish nationality—in Spain. Law 8/2000, which reformed the previous foreigners' law (Organic Law 4/2000) in December 2000, was motivated by "the situation and characteristics of the foreign population in Spain, not only at present, but with an eye to the coming years." Ibid. Its stated purpose is to "regulat[e] immigration from the consideration that it is a structural fact which has made Spain a destination of migratory flow, and also a point of transit toward other states, whose border controls on those routes leaving our country have been eliminated or substantially reduced." Ibid. In short, Law 8/2000 is intended to serve as a "comprehensive, coordinated scheme for the treatment of the migratory phenomenon in Spain," setting forth the rights of legal and illegal, documented and undocumented, foreigners in Spain as well as the procedures for their treatment, including determinations on their regularization and expulsion, and social integration. Ibid. A separate law, Spanish Law 9/1994, regulates the rights and procedures applicable to asylum seekers in Spain.

Human Rights Watch's research concentrated on the treatment of migrants and asylum seekers in Spain, including those who are documented, undocumented, have a right to remain in Spain, and do not have a right to remain in Spain. As such, the primary focus of this briefing paper is the application of Law 8/2000 in the context of Spain's compliance with domestic, regional, and international standards for the treatment of migrants.

² Procedural rights violations, such as the lack of information on one's rights or the inability to access meaningful legal and translation services, can also serve as an obstacle to the right to seek asylum. Obstruction to the right to seek asylum could result in the *refoulement* of potential asylum seekers to countries where their lives or freedom could be threatened, in violation of Spain's fundamental *nonrefoulement* obligations. For further discussion of access to asylum issues in Spain, refer to Human Rights Watch, "The Other Face of the Canary Islands: Rights Violations Against Migrants and Asylum Seekers," *A Human Rights Watch Report*, vol. 14, no. 1 (D), February 2002.

officials to take advantage of the law's newness and varying interpretations of its implementing regulations to justify the detention, transfer, or deportation of migrants without the safeguards provided by the law.

Human Rights Watch's analysis is based on a six-week investigation into the treatment of migrants in Spain, carried out in late 2001. Our researchers spoke with a wide range of government officials and nongovernmental specialists and observers as well as with migrants in Madrid and Barcelona, in cities along the Andalusian coast, in Ceuta and Melilla, and in the Canary Islands.³ They also visited government-supported reception and detention centers where migrants were held.⁴

In October and November 2001, and again in March 2002, Human Rights Watch raised many of its concerns in meetings with responsible government officials, including officials in the Ministries of Interior, Labor and Social Affairs, and Foreign Affairs and with the government delegates in Ceuta and Melilla. To date, however, improvements or changes in Spanish policy and practice to correct the arbitrary treatment of migrants and asylum seekers have yet to be set into motion. On the contrary, the recent government focus has been on efforts to combat illegal immigration, including plans to revise the foreigner's law in order to expedite expulsion of certain migrants from Spain, despite indications that the current application of the law is already too swift and deprive many migrants of the procedural guarantees envisioned in domestic, regional, and international law.

While this report focuses solely on the challenges the government of Spain faces in the implementation of its immigration law, the issues addressed are common to many European countries. Asylum and immigration policy remains a matter for national regulation in Europe, but increasingly these policies are coordinated and dictated by the European Union (E.U.). In this context, the findings contained in this report have broader implications. Specifically, they point to the need to integrate safeguards for migrants' fundamental human rights into E.U. policy. Human Rights Watch is concerned that under the six-month Spanish presidency, European Union policy making in the immigration field has concentrated on migration control without regard for migrant, refugee, and asylum rights.⁵

INCONSISTENT AND UNCOORDINATED IMPLEMENTATION OF THE LAW

The experience of migrants arriving in Spain varies widely, depending to a great extent on their point of entry or place of detention rather than the merits of their individual cases. These disparities in treatment have emerged in large part because the law vests significant authority in certain officials who exercise it without the assistance of clear implementing guidelines or coordinating mechanisms. From cosmopolitan cities, such as Barcelona, Madrid, and Málaga, to small coastal towns along the Andalusian coast, the Spanish cities of Ceuta and Melilla, and the Canary Islands, Human Rights Watch documented an alarming lack of knowledge among officials, police, lawyers, and others working with migrants about the requirements of Law 8/2000 and its implementing regulations.

³ See Human Rights Watch, "The Other Face of the Canary Islands," p. 24. Human Rights Watch also undertook a five-week long research mission to investigate on the treatment of unaccompanied migrant children who had traveled from Morocco to Ceuta and Melilla. See Human Rights Watch, "Nowhere to Turn: State Abuses of Unaccompanied Migrant Children by Spain and Morocco," *A Human Rights Watch Report*, vol. 14, no. 4 (D), May 2002.

⁴ Human Rights Watch requested, and was given permission, to visit three of Spain's six detention facilities, or internment centers, including the internment centers in Barcelona, Málaga, and Murcia. In addition, we were granted permission to visit the two government-supported reception facilities for migrants in Ceuta and Melilla. Although we requested permission to visit the unofficial detention center at the old airport on Fuerteventura, the Spanish government denied our request, noting that nongovernmental organizations (NGOs) are not permitted access to this facility or the similarly constructed emergency detention facility on Lanzarote. Nevertheless, Human Rights Watch spoke with numerous migrants, lawyers, and representatives from nongovernmental and humanitarian organizations familiar with the conditions and treatment of migrants in these makeshift detention centers.

⁵ See Human Rights Watch, "The Human Rights Dimension of E.U. Immigration Policy: Lessons from Member States," speech presented at the Academy of European Law Conference: "State of Play on European Immigration and Asylum Policy: Patching Up Tampere," Trier, Germany, April 2002 (available at <http://hrw.org/backgrounder/eca/eu-immigration.pdf>).

The Role of the National Police

The Spanish National Police, within the Ministry of Interior, play an important role in the implementation and interpretation of the law on migrants as they “have the responsibility of coordinating the whole situation of foreigners in Spain, including expulsions, detention and so forth.”⁶ Civil servants, primarily police officers, are responsible for implementing the law in their particular localities, while the Ministry of Interior has responsibility for overseeing the process throughout Spain. The conduct of the National Police is a significant source of the wide disparities in the treatment of migrants in Spain. Migrants, their lawyers, and representatives of nongovernmental and humanitarian organizations told Human Rights Watch of many instances in which the police exercised their powers arbitrarily or erroneously.

Lawyers working for the Comisión Española de Ayuda al Refugiado (CEAR) (Spanish Commission for Refugee Aid), one of the primary refugee and asylum aid organizations in Spain, told Human Rights Watch that at airports the police routinely violate detained migrants’ and asylum seekers’ procedural rights. They reported that police regularly obstruct migrants’ and asylum seekers’ rights under Spanish and international law to adequate legal counsel and to translation and interpretation services.⁷ For example, lawyers told Human Rights Watch that police at the Madrid airport frequently refused to allow them to speak confidentially with their clients prior to or between the formal asylum application and appeal hearings.⁸ In addition, according to CEAR, asylum seekers report that the police, in violation of Spanish law,⁹ do not routinely provide asylum seekers with contact information for lawyers who are expert in asylum issues or who work for refugee organizations.¹⁰ Immigration lawyers reported that the airport police are also responsible for decisions to detain asylum seekers in excess of the seven days permitted under the law while they await decisions on their asylum claims.¹¹

Concerns about the conduct of the police, particularly in the context of airport operations, were echoed in the 2001 Annual Report of the Ombudsman, which stated that the Ombudsman’s office was required to intervene on behalf of migrants who were refused entry to Spanish territory because “police measures are insufficient” or fail to “take into consideration reasons of a humanitarian nature.”¹² Moreover, the Ombudsman’s report noted that

⁶ Human Rights Watch interview, Manuel Prieto, head of foreigners and documentation department, José García Santalla, chief of central foreigners unit (Foreigners and Documentation Department), and José Ramón Pérez García, chief of statistics, Spanish National Police (within the Ministry of Interior), Madrid, November 14, 2001.

⁷ Spanish Law 9/1994 (May 19) (published in *Boletín Oficial del Estado* [Official Bulletin of the Spanish State], nos. 122 and 131), amending Law 5/1984 (March 26), Regulating Refugee Status and the Right to Asylum, Chapter Two, Article 4(1); Royal Decree 203/1995 (February 10) approving the Implementation Regulation of Law 5/1984 (March 26) regulating Refugee Status and the Right to Asylum, which was amended by Law 9/1994 (May 19) (published in *Boletín Oficial del Estado*, no. 52, 2 March 1995), Articles 8(4) (request made within Spanish territory) & 19(2) (requests made at border points); Office of the United Nations High Commissioner for Refugees, *Handbook on Procedures and Criteria for Determining Refugee Status* (Geneva: UNHCR, 1992), para. 192. See also, Law 8/2000, Article 22(1), giving all migrants who cannot afford counsel the right to *pro bono* legal services and interpretation and translation services.

⁸ Human Rights Watch interviews, CEAR lawyers, Madrid, October 26, 2001 and November 5, 2001.

⁹ Law 5/1984 (March 26), Regulating Refugee Status and the Right to Asylum (Published in *Boletín Oficial del Estado*, no. 74, 27 March 1984), modified by Law 9/1994 (May 19) [Law 9/1994], § 114, Article 5(1).

¹⁰ Human Rights Watch interviews, CEAR lawyers, Madrid, October 26, 2001 and November 5, 2001.

¹¹ Human Rights Watch interviews, CEAR lawyers, Madrid, October 26, 2001 and November 5, 2001; Human Rights Watch interview, Médicos sin Fronteras (MSF), Madrid, October 8, 2001. Although the courts have interpreted the seven-day period to include weekend and holiday days, lawyers report that at times the police still maintain that the seven-day period only includes official working days. Spanish National High Court, decision no. 53/2002, February 27, 2002.

¹² Ombudsman Annual Report, presented before the Spanish Parliament on October 8, 2001, Section 3.1.1, “Entry Requirements,” pp. 61-63. The office of the Ombudsman was created under the Spanish Constitution of 1978. The Ombudsman is appointed for a five-year term by the legislature, which requires a majority vote in both Congress and the Senate, and is a delegate of the Spanish Parliament. Although the Ombudsman’s role is not executive in nature and is limited to the critique of acts of administration, the office of the Ombudsman is tasked with surveying all administrative functions of the Spanish government, including administration in embassies abroad and in the autonomous and local administrations throughout Spain. The office is also tasked with protecting human rights and has a department designated for issues of immigration and foreign affairs. Once a complaint has been filed with the Ombudsman’s office, the office can *ex officio* investigate. The government is constitutionally required to respond to all complaints and requests for information filed by

police authorities responsible for border control frequently failed to provide migrants with an explanation of why they were not permitted entry to Spanish territory.¹³

The Ombudsman's report further indicated that the lack of uniform criteria for determining how legal aid services should be provided in airports permits large discrepancies in the form and quality of legal services available to migrants. The report noted, for instance, that authorities at the Barajas Airport in Madrid have provided significantly better procedural safeguards for migrants, such as the presence of a lawyer from the first encounter with the police, than comparable authorities operating in the Barcelona, Las Palmas, and Lanzarote airports.¹⁴ In Las Palmas and Lanzarote, for example, a lawyer is only present during the notification on the ruling to return the migrant. Furthermore, in Las Palmas and Lanzarote, migrants may reject their right to legal assistance by signing a waiver in the presence of a representative of an airline company, rather than in consultation with a lawyer.¹⁵

Human Rights Watch also received reports that police in locations outside of the airports sometimes abuse their discretion in handling immigration matters. In particular, lawyers, migrants, and migrants' organizations told Human Rights Watch that the police are poorly trained regarding the documentation required for residence permits and often ask migrants to produce documentation other than or in addition to that required by the law.¹⁶ For example, in one case, the police required an Armenian migrant to submit proof of economic means to stay in Spain and a visa from her country of origin in order to obtain a residence permit, though neither element was required by law.¹⁷

As another example of arbitrary police conduct, migrants and lawyers told Human Rights Watch that in December 2000 police based in Madrid decided that they would no longer renew any residence permits granted to migrants on the basis of a "humanitarian exception."¹⁸ This abrupt change in policy was apparently made at the local level, not by the Ministry of Interior, and police in other parts of the country did not follow suit. Moreover, the National Police failed to adequately communicate its new policy to the Ministry of Labor and Social Affairs, which, as the agency responsible for issuing work permits, shares a role in documenting migrants. Consequently, the new police practice in Madrid had a profound effect on large groups of migrants who had previously renewed their residence permits without difficulty. Under Spanish law migrants who have been living and working legally in Spain with humanitarian exception documents should be able to transition to the ordinary residence and work permit regime. This particular category of migrants, however, went from legal to illegal status when their

the office of the Ombudsman. Moreover, the Ombudsman and his staff have unrestricted access to all administrative offices in Spain. Because of the Ombudsman office's independent character and special position in Spanish law, particularly its unique role as a delegate to the Spanish Parliament, the Ombudsman has the power to bring issues to and to appear before the Constitutional Court.

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Human Rights Watch interviews, CEAR lawyers, Madrid, October 26, 2001 and November 5, 2001; Human Rights Watch interview, Concha Badillo, legal coordinator, MSF, Madrid, March 26, 2002; Human Rights Watch interviews with migrants, Madrid, November 4-5, 2001.

¹⁷ Human Rights Watch interview with Armenian migrant, Madrid, November 4, 2001. This account was confirmed by the migrant's lawyer. Human Rights Watch interview, Estela Gracia, Madrid, November 5, 2001.

¹⁸ Under Spanish law there are two types of humanitarian exception documents: 1) for asylum seekers who are denied asylum but whose claims are considered worthy enough to warrant permission to stay in Spain on the basis of humanitarian reasons; and 2) for migrants who do not possess the required documentation for entry into Spain but for whom legal entry and stay is authorized "when there exist exceptional reasons of a humanitarian nature, public interest or compliance with commitments acquired by Spain" or for whom temporary residency permits are granted "for humanitarian reasons, in exceptional circumstances, or when a situation of cultural rooting can be proven." Examples of humanitarian reasons include medical needs, family ties to Spain, and the infeasibility of returning a migrant to his/her country of origin. See Law 9/1994, Article 17(2); Law 8/2000, Articles 25(4) & 31(4); Human Rights Watch interview, lawyers working with migrants at CETI, Ceuta, October 18, 2001.

humanitarian exception documents were not renewed, and once illegal encountered serious administrative obstacles to transitioning to the ordinary residence and work permit regime.¹⁹

When Human Rights Watch addressed these concerns in meetings with the Ministry of Interior and the Ministry of Labor and Social Affairs, authorities said they were unaware of these policies or their ramifications.²⁰ Moreover, representatives of both ministries indicated that under the new policy migrants should be able to change their status from a humanitarian exception basis to the ordinary work and residence permit regime without difficulty.²¹ Aside from these assurances that the new police policy should not adversely affect migrants in the way in which it does, however, neither ministry had answers for how the government would or could address these issues to ensure that a particular group of migrants are not arbitrarily deprived of their ability to maintain legality in Spain.²² Representatives of the Ministry of Labor and Social Affairs only indicated that because “the law and regulation are very new [perhaps] it is difficult to put it all into practice.”²³

THE ROLE OF THE GOVERNMENT DELEGATES IN CEUTA AND MELILLA

Human Rights Watch identified the most striking irregularities in the treatment of migrants in the Spanish cities of Ceuta and Melilla, where the government delegates wield significant and unchecked decision-making power with respect to immigration management.²⁴ Although the Spanish National Police in both cities report to the delegate and, in a majority of cases, have the first contact with migrants, they do not appear to have the authority to make decisions about the treatment of migrants. Rather, all decisions regarding migrants in the

¹⁹ Spanish law requires that migrants apply for an ordinary work and residence permit in order to regain their legal status, thus converting the basis for their legality in Spain from a humanitarian exception to the ordinary immigration regime. Successful transition to the ordinary immigration regime requires both that the migrant gain permission from the Ministry of Labor and Social Affairs to work in Spain and permission from the Ministry of Interior (through the police) to live in Spain. Many migrants whose humanitarian status was not renewed, however, found that when they tried to renew their work permits on the basis of their past work in Spain and proof that they had been paying social security taxes—the normal renewal requirements for a two to three-year work permit—they were required to present a pre-contract (or offer) of employment. Some migrants who work in seasonal jobs cannot get pre-contracts from their employers because their employers, temporary agencies, do not issue pre-contracts. Other migrants have found it difficult to convince employers to provide them with a pre-contract because employers are afraid—unnecessarily so—that they will be sanctioned under Law 8/2000 for providing pre-contracts to undocumented migrants. Consequently, a number of migrants have not been able to renew their work permits, and, in turn, cannot obtain permission from the police to legally stay in Spain. The new condition is a consequence of failed coordination and communication between the police and the authorities within two separate departments of the Ministry of Labor and Social Affairs (one department for humanitarian exception approvals and one for ordinary work permit approvals), and not a reflection of an intentional change in work permit renewal policy. See Human Rights Watch interview, CEAR lawyers, Madrid, October 26, 2001; Human Rights Watch interviews with migrants, Madrid, November 4-5, 2001; Human Rights Watch interview, Concha Badillo, legal coordinator, MSF, Madrid, March 26, 2002.

According to MSF, the policy was revised in November 2001—due to swift and insistent pressure from NGOs that denounced the new policy as illegal—so that migrants whose humanitarian exception documents are not renewed technically have a three-month period in which to regularize their situations. The police continue, however, to refuse renewals of these documents and have not improved inter-ministry coordination in order to facilitate migrants’ transition from one permit regime to the other. MSF has recently had some success appealing the denial for renewal of documents issued on the basis of humanitarian circumstances. Human Rights Watch interview, Concha Badillo, legal coordinator, MSF, Madrid, March 26, 2002.

²⁰ Human Rights Watch interview, Carlos Guervós, deputy director of immigration, Ministry of Interior, Madrid, November 12, 2001; Human Rights Watch interview, Concepción Dancausa Treviño, secretary general of social affairs, and Antonio Maceda García, director of migration affairs, Ministry of Labor and Social Affairs, Madrid, November 13, 2001.

²¹ Ibid.

²² Ibid.

²³ Human Rights Watch interview, Concepción Dancausa Treviño, secretary general of social affairs, and Antonio Maceda García, director of migration affairs, Ministry of Labor and Social Affairs, Madrid, November 13, 2001.

²⁴ Human Rights Watch has documented the role of government delegates in summary expulsions and other violations of the rights of unaccompanied migrant children in Ceuta and Melilla in *Nowhere to Turn: State Abuses of Unaccompanied Migrant Children by Spain and Morocco* (May 2002). See *Human Rights Watch Report*, vol. 14, no. 4 (D), May 2002.

Spanish cities of Ceuta and Melilla rest in the hands of the respective government delegates. Because government delegates represent the national government in the region over which they have control, including exercising control over immigration decisions, the central government based in Madrid exercises little oversight of their functions and activities.

Our research suggests that the government delegates and their staff lack clear and meaningful guidelines for exercising this power. For example, the chief of cabinet of the government delegate's office in Melilla was unable to articulate the basis for their decisions about which migrants would be expelled and which would be provided documentation to remain in Spain. Although the most recent transfer of 192 migrants to the peninsula had taken place only a few days prior to our meeting, Chief of Cabinet Rocío Rodríguez was unable to clarify the reasoning or describe the type of documents with which migrants had been transferred, noting only that, "Some leave with some documents; others [paused]. What is important is there are centers for migrants on the peninsula where they can get help."²⁵ She further explained that the government delegate's office must "study each case. Otherwise, you have to let them all in or none. . . . Also, for example, this office prefers to choose [migrants] that can integrate on the peninsula."²⁶

A representative of the national police in Melilla also testified to the absolute authority of the Government Delegate and the apparently arbitrary nature in which that authority is exercised. Asked about the treatment of different migrants under various circumstances, he told Human Rights Watch:

I cannot give an opinion; I just put into practice what I am told. But a person who gets in [the government's temporary residence facility] and has papers to go to the peninsula can be exactly the same as the person who is sent back to Morocco . . . or for whom we start an expulsion procedure Everything depends on the Delegate.²⁷

The lack of checks on the power to make immigration control decisions on the basis of Law 8/2000, in combination with isolated decision-making and an absence of transparent guidelines for implementation and coordination between the central government and Spain's many regions, have resulted in arbitrary differences in the treatment of the same migrant groups from one city to the next. The varying interpretation and application of Law 8/2000 is particularly pronounced in Ceuta and Melilla and, as detailed below, in connection with implementation of legal provisions relating to *devolución* (a form of immediate repatriation) and *expulsión* (expulsion).

IMPLEMENTATION OF THE LAW RELATING TO *DEVOLUCIÓN* AND *EXPULSIÓN*

The substantive areas of the immigration law and regulation that seem to engender the most confusion among immigration lawyers, aid organizations, government officials, and migrants are the legal concepts of *expulsión* and *devolución* and the applicable procedures required by Spanish law. Not surprisingly, we found gross disparities in the treatment of similarly situated migrants, depending on their point of entry. Our research indicates that the unchecked, ill-informed, and arbitrary decision-making of certain officials results in serious violations of migrant rights.

Devolución

Under Spanish law, *devolución* is a form of expedited repatriation applicable to two categories of migrants, those found illegally entering Spain (such as migrants arriving by *patera*)²⁸ and those migrants previously

²⁵ Human Rights Watch interview, Rocío Rodríguez Bayón, chief of cabinet, Office of the Government Delegate for the autonomous city of Melilla, Melilla, November 9, 2001.

²⁶ Ibid.

²⁷ Human Rights Watch interview, officer at the national police station in Melilla, Melilla, November 9, 2001.

²⁸ In recent years, Spain, like other European border countries, has seen an increase in the movement of illegal immigrants to its shores via small raft-like boats (*pateras*). Migrants to Spain arrive along the Andalusian coast across the Gibraltar Strait and to the Canary Islands from the North African coast.

expelled from Spain by the standard expulsion process (i.e., with an expulsion order).²⁹ *Devolución* of migrants found illegally entering Spain must be executed within seventy-two hours of entry by returning applicable migrants to the country from which they departed or transited.³⁰ For example, migrants attempting to enter Spain via the North African cities of Ceuta and Melilla, along the Andalusian coast, or from the Canary Islands may under Spanish law be repatriated by *devolución* to Morocco. Because the Moroccan government does not generally permit the repatriation to its territory of non-Moroccan nationals such as Algerians and sub-Saharan African migrants, the practice of *devolución* has become an immigration procedure used almost exclusively for the repatriation of Moroccan migrants from Spain back to Morocco. Unlike deportations carried out by ordinary expulsion procedures, which have the effect of registering the migrant in the Schengen database system and preventing future regularization³¹ in Spain and other Schengen countries,³² deportations by *devolución* are not recorded and have no lasting effect on the ability of migrants to regularize in Spain.

Human Rights Watch researchers identified wide variations in the authorities' application of the *devolución* concept, which were in a number of cases inconsistent with Spanish law. For example, as mentioned above, *devolución* is intended for the immediate repatriation of migrants who are found illegally entering Spain or who were subject to a previous expulsion order. Spanish law does not permit detention in excess of seventy-two hours in cases in which migrants found illegally entering Spain are subject to *devolución*.³³ Courts may only order the

²⁹ See Article 58 of Law 8/2000 (Regarding the Rights and Freedoms of Foreign Nationals Living in Spain and their Social Integration) in combination with Section 5.a, Article 138 of the law's Regulations for the Application of Spanish Law on Foreign Nationals. For discussion of Spanish law on expulsions, refer to the "Expulsión" section below.

³⁰ The Ministry of Interior departments for immigration and foreigners and documentation confirmed this interpretation in meetings with Human Rights Watch. Human Rights Watch interview, Carlos Guervós, deputy director of immigration, Ministry of Interior, Madrid, November 12, 2001; Human Rights Watch interview, Manuel Prieto, head of foreigners and documentation department, José García Santalla, chief of central foreigners unit (Foreigners and Documentation Department), and José Ramón Pérez García, chief of statistics, Spanish National Police (within the Ministry of Interior), Madrid, November 14, 2001. Although Spanish law does not concretely set forth that *devolución* of migrants found illegally entering Spain must be executed within seventy-two hours of their entry on Spanish territory, the Ministry of Interior and immigration lawyers have interpreted the law in this way. The reasoning behind this interpretation is as follows: Spanish law prohibits the detention of any person beyond seventy-two hours without a judicial order and Spanish Law 8/2000 does not provide for the prolonged (beyond seventy-two hours) detention of this particular category of migrants, even by judicial order. Thus, these migrants can only be detained for seventy-two hours, during which time *devolución* must be executed or the migrant should be released. For further discussion, see footnote 33.

³¹ By "regularization" Human Rights Watch means the ability of migrants to secure legal status in a country—on a permanent or temporary basis. Many West European countries sponsor "regularization programs" for undocumented migrants who wish to secure legal status. Such programs often require, for example, the presentation of documents proving that a migrant has lived and worked in a country for a specific period of time, and that he or she has a current offer of work.

³² In 1985, five European states (France, Germany, Belgium, Luxembourg, and the Netherlands) signed an agreement creating a border-free territory within their external borders. A further convention, which was drafted and signed on 19 January 1990 and came into effect in 1995, abolished the internal borders of the signatory states and created a single external border where immigration checks are carried out in accordance with a single set of rules. In the late 1990's, this border-free zone, "the Schengen area" (named for the town in which the agreement was concluded), expanded to include all the European Union members states, with the exception of the United Kingdom and Ireland. One of the core features of the creation of the Schengen system is the establishment of an automatic network that allows all police stations and consular agents from Schengen member states to access common data. Placement into the Schengen Information System (SIS) on the basis of the denial of entry to a territory or for the purpose of recording the issuance of an expulsion order from a member state effectively bars future entry of such persons into the same and all other Schengen member states' territory. For more detailed information, refer to: <http://europa.eu.int/scadplus/leg/en/lvb/l33020.htm>, (accessed June 10, 2002).

³³ Detention of migrants beyond the initial seventy-two hours requires a court order for the migrant's detention, or internment, in an official internment (prolonged detention) center. Because Spanish law does not specify that migrants who were found illegally entering Spain and who are thus subject to *devolución* may be interned, as opposed to migrants who have previously been expelled from Spain by expulsion order (also migrants for whom *devolución* is envisioned) or migrants who are subject to deportation on the basis of *retorno* or *expulsión*, the Ministry of Interior, immigration lawyers, and Algeciras Court of Instruction Number Five have interpreted Spanish law as prohibiting the detention of migrants subject to *devolución* (for illegally entering Spain) beyond seventy-two hours. The Algeciras court decision holds as follows:

transfer of migrants to longer-term internment centers in cases where expulsion proceedings, distinct from the process of deportation by *devolución* for illegal entry, have been initiated. Yet, a number of the migrants Human Rights Watch interviewed in the Canary Islands showed us court orders for their detention in internment-type facilities, such as the makeshift airport detention centers on Fuerteventura and Lanzarote, pending deportation by *devolución*.³⁴ Human Rights Watch researchers also found that some migrants detained for more than seventy-two hours (in some cases for up to forty days) on the basis of their being found illegally entering Spain were still deported by a process of *devolución*.³⁵

In Melilla, Human Rights Watch research also raised concerns that repatriation by *devolución* is misapplied to some migrants who have been present in the territory for more than seventy-two hours and were not subject to a prior expulsion order. A number of migrants told Human Rights Watch that they were afraid to go into town because the police sometimes arrest migrants there and deport them to Morocco by *devolución*, telling the Moroccan authorities that they had just been found illegally entering Spain.³⁶ At the time of our visit to Melilla in November 2001, a number of Algerian migrants were sleeping in filthy, makeshift shelters outside the government-established temporary residence facility (Centro Estancia Temporal de Inmigrantes (CETI) (The Center for the Temporary Residence of Immigrants)), without access to food, water, sanitary facilities, or medical care. The migrants with whom we spoke—some of whom had family members in the CETI facility and had been in Melilla for more than a month—told Human Rights Watch that they were afraid to register their presence in Melilla, a condition for entering the housing facility, because the police would deport them (by *devolución*) without an opportunity to be heard.³⁷

At a minimum, the lack of clarity and predictability regarding these migrants' status has humanitarian consequences for them. Moreover, their accounts suggest that in at least some cases the authorities misapply the

It must be concluded that the measure of internment under the *devolución* process because of an illegal entrance to the country (article 58(2)(b)) is not provided by the law; therefore, we leave without effect the measure adopted, holding for the termination of internment, without any possibility of its maintenance related to inferences of the spirit of the law or paradoxical situations from which the interpretation can lead, because under the doctrine of the Constitutional Court legal procedures must be interpreted in the most favourable way for fundamental rights and there is no doubt that the internment measure affects a fundamental right.

See Court of Instruction Number Five, Algeciras, August 31, 2001; Human Rights Watch interview, Carlos Guervós, deputy director of immigration, Ministry of Interior, Madrid, November 12, 2001; Human Rights Watch telephone interview, José Luis Rodríguez, president of Andalucía Acoge and lawyer for migrants in the Málaga Internment Center, October 17, 2001; Human Rights Watch interview, Cristina Olmedo, lawyer, Red Acoge, Madrid, October 11, 2001 and June 10, 2002; Human Rights Watch interview, Rafael González, lawyer for migrants in the Málaga Internment Center, Málaga, October 22, 2001; Human Rights Watch telephone interview, Carlos Álava, legal director, Médicos Sin Fronteras, January 18, 2002. See also Article 58(5) of Law 8/2000 (Regarding the Rights and Freedoms of Foreign Nationals Living in Spain and their Social Integration), permitting internment of migrants who cannot be returned within the initial seventy-two hour period where said migrants have previously been expelled from Spain and are subject to *devolución* on this basis.

³⁴ Human Rights Watch interviews with migrants, Las Palmas, October 29–November 3, 2001.

³⁵ See Human Rights Watch, "The Other Face of the Canary Islands: Rights Violations Against Migrants and Asylum Seekers," *A Human Rights Watch Report*, vol. 14, no. 1 (D), February 2002. Some migrants arriving in the Canary Islands are held in internment on the basis of an order for their deportation in accordance with the law on *retorno* (form of repatriation). Migrants held on the basis of *retorno*, as distinct from *devolución*, may legally be placed in internment if, after seventy-two hours, a judge makes the order. See Article 60 of Law 8/2000 (Regarding the Rights and Freedoms of Foreign Nationals Living in Spain and their Social Integration). While some authorities in the Canary Islands argue that *devolución* should be viewed as *retorno* in order to legitimize the detention of migrants after the initial seventy-two-hour period, both judges and lawyers working on the islands have expressed their disagreement with this interpretation. Human Rights Watch interview, CEAR (Las Palmas), Las Palmas, November 2, 2001. *Retorno* and *devolución* are two distinct legal concepts. *Retorno* applies in cases where a migrant's entry in Spain is rejected (such as in airports or at a border crossing where technically a migrants' presence in Spain is not recognized as presence in the "territory"). In contrast, *devolución* applies to migrants who are considered to be in Spain, but who are subject to immediate repatriation.

³⁶ Human Rights Watch interviews with migrants, CETI, Melilla, November 8, 2001.

³⁷ Human Rights Watch interviews with Algerian migrants outside CETI, Melilla, November 8, 2001.

devolución concept to migrants who have been in the territory more than seventy-two hours and were not subject to a prior expulsion order. The chief of cabinet in the office of the government delegate in Melilla, for example, told Human Rights Watch “*devolución* is always when expulsion (from Spain or another European country) happened previously.”³⁸ Given that the vast majority of migrants arriving in Melilla, as in Ceuta or along the Andalusian coast, do not have identification documents through which past expulsion orders could be traced in the short period typically preceding their deportation, it is simply not plausible that past expulsion orders form the basis for applying *devolución* in many cases in Melilla. Rather, it appears that the authorities in Melilla have interpreted the *devolución* concept in a manner that enables them to repatriate large numbers of migrants, particularly Algerians, regardless of the length of their stay in Spain or the existence of a past expulsion order.

When Human Rights Watch met with officials at the Spanish National Police headquarters in Madrid, Head of the Office for Foreigners and Documentation Manuel Prieto confirmed that *devolución* should take place within seventy-two hours. He noted, however, that in the case of Algerians, they can be sent back later with *devolución* orders, even “if they are in the street.”³⁹ Our researchers explained that some Algerians were present in Spain for more than one month and asked whether they, too, could be deported by a process of *devolución*, despite the fact that authorities were aware of the longevity of their stay and the absence of a pre-existing order for *devolución* or expulsion. Manuel Prieto responded that, “[t]he law permits two possibilities: 1) if they never registered and the police don’t know . . . then there are no roots in Spain; and 2) in Ceuta and Melilla they don’t have the right to go to the peninsula.”⁴⁰

Human Rights Watch investigators found yet another approach to *devolución* along the Andalusian coast, where migrants apprehended while illegally entering Spain—to whom *devolución* should be applied—face expulsion proceedings and court-ordered detention in longer-term internment centers, instead of *devolución*. In October 2001, Human Rights Watch interviewed five women from The Philippines and twelve men from sub-Saharan African countries, such as Sierra Leone and Nigeria. These migrants had all been detained and transferred to the Capuchinos Internment (detention) Center in Málaga by court order immediately after their arrival on the Andalusian coastline by *patera*.⁴¹ According to the office of the Ombudsman, the initiation of expulsion proceedings against such migrants is a misapplication of Spanish law, which specifies *devolución* as the applicable form of repatriation in such cases.⁴² Some migrants who were improperly detained immediately after they attempted to enter Spanish territory illegally along the Andalusian coast have obtained court-ordered release on these grounds.⁴³

In short, in the Canary Islands, migrants with an order for repatriation by *devolución* are being detained as though they were in expulsion proceedings, but then nonetheless repatriated by *devolución* after the permissible seventy-two-hour period has elapsed. Similarly, some migrants arrested in Melilla, particularly Algerians, face repatriation by *devolución*, regardless of the length of their stay in Spain or the existence of a prior expulsion order. In a different variation, migrants arriving along the Andalusian coast, who should be repatriated by *devolución*, face detention in internment facilities and expulsion proceedings instead. In reality, there is little

³⁸ Human Rights Watch interview, Rocío Rodríguez Bayón, chief of cabinet, Office of the Government Delegate for the autonomous city of Melilla, Melilla, November 9, 2001.

³⁹ Human Rights Watch interview, Manuel Prieto, head of foreigners and documentation department, José García Santalla, chief of central foreigners unit (Foreigners and Documentation Department), and José Ramón Pérez García, chief of statistics, Spanish National Police (within the Ministry of Interior), Madrid, November 14, 2001.

⁴⁰ Ibid.

⁴¹ Human Rights Watch interviews with migrants in the Capuchinos Internment Center, Málaga, October 22, 2001.

⁴² Ombudsman Annual Report, presented before the Spanish Parliament on October 8, 2001, Section 3.1.2.4, pp. 65-66. The Ombudsman’s report further explains that the initiation of expulsion proceedings (that result in the issuance of an expulsion order) would act as a form of double sanction for one act and that for many of these migrants the expulsion order may never be realized, having “[t]herefore, the only practical effect of . . . obstruct[ing] the regularization of these persons via the appropriate administrative authorization, leading them to become marginalized in society.” Ibid.

⁴³ On September 2, 2001, Court of Instruction Number Five in Algeciras released thirty-one Nigerians who had been detained in Capuchinos Internment Center (Málaga) for fourteen days. Leonor García, “A Judicial Order Finds the Detention of Immigrants Arriving in Pateras Illegal,” *El País*, September 2, 2001.

discernible difference between these groups of migrants, except their points of entry to Spain. Rather, it appears that for certain categories of migrants, local and regional authorities are improvising the implementation of *devolución* provisions of Law 8/2000 to address the particular dimensions of illegal migration in their localities. The result is erroneous and arbitrary decision-making in violation of migrants' rights under Spanish, regional, and international law.

Expulsión

Human Rights Watch researchers also identified arbitrary regional disparities in the authorities' approach to expulsion orders, often to the disadvantage of the migrants who are then permanently denied status in the country regardless of whether consideration of the merits of their individual cases, had it occurred, would have provided a legal basis for their presence in Spain. Under Spanish law, an expulsion order may be issued to expel or deport a person from Spanish territory for reasons such as illegal presence in the country or conviction of serious crimes. An expulsion order may be issued in lieu of the sanction of a fine to migrants who violate certain Spanish laws, for example, by living and working illegally in Spain. Authorities may also issue expulsion orders to foreign nationals who have been convicted of crimes sanctioned with a penalty of more than one year of imprisonment.⁴⁴ Migrants may be held in detention pending the issuance of an expulsion order once the proceedings have been initiated, but have the right to appeal the request for expulsion as well as the right to counsel and translation and interpretation services in connection with the expulsion process. Depending on the type of expulsion order, migrants may be expelled from Spanish territory either immediately or within a fixed time period of not less than seventy-two hours.⁴⁵

In practice, the authorities' approach to *expulsión* varies in ways that have a significant impact on the rights that migrants subsequently enjoy. Specifically, in Ceuta and along the Andalusian coast, Human Rights Watch found that the authorities routinely issue expulsion orders to migrants they deem to have no right to stay in Spain, without regard to whether they can actually be returned to their country of origin or to the country from which they departed to enter Spain. Many of those migrants who receive expulsion orders cannot be returned because they lack documentation of their country of origin or their country of origin will not accept them back. In such cases, the purpose of the expulsion orders seems to be simply to process the case, not to commence repatriation. A representative of a migrants' aid organization in Algeciras described a typical case as follows: "They are kept in the police station the minimum time. It's not comfortable. The police have to give food and water; it's a bother. So they put them on the street. Migrants leave the police station with this [order for expulsion] and that's it."⁴⁶

The Spanish National Police in Ceuta appear to initiate expulsion proceedings as a matter of course against undocumented migrants when they register at the police station, which they must do to apply for asylum or regularization or to gain admission to the government-run reception center. Neither police officers nor lawyers explain the foreigners' law to migrants or the fact that, by registering, they are inadvertently requesting expulsion from Spain. This practice seems particularly prevalent in the Ceuta authorities' handling of Algerian migrants' registration. As Deputy Chief of Documentation for the Spanish National Police in Ceuta Ramon Capdevila explained:

They don't ask for anything. They just arrive and say 'we're Algerian.' We know their government won't take them back and that we'll give expulsion papers but that nothing will happen to them unless the E.U. pressures Algeria. . . . They get their expulsion papers. We do all the paperwork to expel them. Maybe in the future the Algerian government will agree to take them back and we'll detain them and send them.⁴⁷

⁴⁴ See Law 8/2000, Articles 53 & 57.

⁴⁵ See Law 8/2000, Articles 63 & 64.

⁴⁶ Human Rights Watch interview, Algeciras Acoge, Algeciras, October 15, 2001. See also Ombudsman Annual Report, presented before the Spanish Parliament on October 8, 2001, section 3.1.2.4, "Entry of undocumented persons via the Andalusian coastline," pp. 65-66.

⁴⁷ Human Rights Watch interview, Ramón Capdevila, deputy chief of documentation, Spanish National Police in Ceuta, Ceuta, October 19, 2001.

In Ceuta, the expulsion order paradoxically enables migrants to travel to the Spanish peninsula. When Human Rights Watch asked the Government Delegate for Ceuta about the practice of giving migrants expulsion documents as a matter of course and its effect on Algerian migrants in the city, he confirmed that this is “the strategy because this will allow them to get to the peninsula [where] they can start an appeal against the process or arrive in Spain to get lost or keep on to France or the Benelux countries.”⁴⁸ In fact, according to migrants and aid organizations, the Spanish authorities themselves pay for migrants’ transportation to the mainland by ferry.⁴⁹

While there is nothing legally incorrect about the issuance of expulsion orders against migrants who cannot be returned to their countries of origin, the policy has humanitarian consequences that raise concern. Significantly, an expulsion order gives migrants no right to work, and upon its issuance, they may never regularize their status in Spain or in another Schengen country.⁵⁰ The authorities’ approach to expulsion in Ceuta and along parts of the Andalusian coast simply sweeps large numbers of migrants into a permanently illegal existence in Spain.⁵¹ Authorities in Ceuta justify this course of action by pointing out that they:

. . . cannot regularize or legitimate migrants because it would just open the door to an even greater influx. We have to try to not make it so easy, to make it more difficult or we create the influx.⁵²

⁴⁸ Human Rights Watch interview, Luis Vicente Moro, government delegate for the autonomous city of Ceuta, Ceuta, October 19, 2001.

⁴⁹ Human Rights Watch interview, Hermanos Franciscanos de Cruz Blanca (Franciscan Brothers of the White Cross), Ceuta, October 18, 2001; Human Rights Watch interviews with migrants, Ceuta, October 18-19, 2001.

⁵⁰ See e.g., Human Rights Watch interview, Ramón Capdevila, deputy chief of documentation, Spanish National Police in Ceuta, Ceuta, October 19, 2001, noting, “from the moment they [migrants] get expulsion papers, they are in SIRINE. There is a list of non-admissible persons, which is specifically for these people who have been served expulsion orders. . . . Consequently, [they] have no further opportunity to regularize their situation in the Schengen area.” For an explanation of the Schengen system, see footnote 32.

⁵¹ Human Rights Watch interview, Álvaro García, lawyer for Málaga Acoge, Málaga, October 22, 2001. Attorney García works with migrants along the Andalusian coast, including numerous migrants who arrive from Ceuta. Although a previous regularization program for foreigners in Spain permitted migrants with expulsion orders to apply for an annulment of their orders for the purpose of regularizing their status, this possibility does not exist for migrants who arrived in Spain after June 1999. Specifically, the regularization that took place when the government replaced Spanish Law 7/85 on Foreigners with Law 4/2000 permitted all migrants who could prove they were in Spain prior to June 1999 to annul past expulsion orders. Despite this provision, however, organizations working with migrants in Madrid have expressed concern that a number of their clients coming from Ceuta—some of whom have been in Spain more than five years—have expulsion orders that cannot be annulled and are, consequently, unable to regularize their situations. Human Rights Watch interview, lawyers working for CEAR, Madrid, October 26, 2001. The rules governing the most recent regularization—which began in January 2001 after the foreigners’ law was again amended (resulting in the current law, Law 8/2000)—did not introduce a similar clause permitting migrants to annul their expulsion orders in order to regularize their status. See generally Law 8/2000. Human Rights Watch interview, Arsenio García, lawyer, Madrid, November 5, 2001; Human Rights Watch interview, Concha Badillo, legal coordinator, MSF, March 26, 2002. Government Delegate Moro in Ceuta confirmed concerns that Ceuta’s practice of routinely issuing expulsion orders to migrants has the permanent effect of prohibiting migrants’ regularization:

There will be no more regularizations in Spain. . . . A lot of immigrants believe the Spanish government will (because there are so many immigrants) make a change in the laws to suit them. The most certain thing is that in 2002 the Spanish government will approve a contingency of immigrants to come to Spain, the number of which will be the result of trade union requests.

Human Rights Watch interview, Luis Vicente Moro, government delegate for the autonomous city of Ceuta, Ceuta, October 19, 2001. Migrants who have been sent to the peninsula with expulsion orders will not be among those migrants permitted to apply for these contingency spots. *Ibid.*

⁵² Human Rights Watch interview, Ramón Capdevila, deputy chief of documentation, Spanish National Police in Ceuta, Ceuta, October 19, 2001.

The authorities in other parts of Spain have taken a different approach, however. If illegal migrants arriving in Melilla and other parts of Spain cannot be returned to their country of origin, they are regularly granted residence and work permits on the basis of a “humanitarian exception” or simply allowed to live illegally in Spain.

Regarding the handling of undocumented migrants in the Canary Islands, the Ombudsman has recommended that:

[o]nce it has been established that these foreign citizens may not be returned to their countries, the process for their documentation should be initiated, with the aim of providing them with a residence permit under exceptional circumstances, as well as a work permit so they may remain either on the islands or travel onto the mainland.⁵³

The impact of the nearly automatic issuance of expulsion orders for certain categories of migrants in Ceuta and along the Andalucian coast is particularly troubling in light of the widespread confusion among migrants regarding such orders. According to one organization working with migrants, “[m]any think they are legal with this paper! Many times they have come here to show us their papers and say to Acoge, ‘Look, I’m legal.’”⁵⁴ Not a single migrant with whom Human Rights Watch spoke in Ceuta demonstrated any understanding of the effect an expulsion order had on his or her legal status in Spain. Rather, they uniformly explained that the police were sending them *carte blanche* to the mainland so they could work.⁵⁵ Many of the undocumented migrants Human Rights Watch interviewed in Ceuta said they had applied for “work papers” and that they knew they would be getting them soon, because that is what the police had told them. Other migrants said they had applied for “expulsion,” but explained that this meant they could go to the peninsula.⁵⁶

In contrast, migrants in Melilla expressed fear and uncertainty about police expulsions and the fact that on any day the police could show up with their list and either take them to the mainland for *expulsión* or repatriate them directly by *devolución* to Morocco.⁵⁷

Migrants’ confusion about their status and rights is exacerbated by the lack of procedural safeguards, detailed below, that plague the Spanish authorities’ implementation of Law 8/2000. Deprived of the information, translation, and legal services required by Spanish law, migrants accept the expulsion orders, foregoing appeals and neglecting to advance alternative bases upon which they may be entitled to remain in Spain, such as their demonstrable roots in Spain, humanitarian considerations, or protected refugee status. In turn, many of these migrants lose the opportunity they might have otherwise enjoyed to regularize their status. The end result of the authorities’ approach to *expulsión* in Ceuta and along the Andalucian coast is a serious distortion of Spanish immigration law, creating a large population of permanently illegal migrants in Spain.

PROCEDURAL ISSUES: ACCESS TO INFORMATION, COUNSEL, INTERPRETATION, INDIVIDUALIZED DETERMINATION, AND APPEAL

Human Rights Watch’s investigation indicated that the problems identified above were dramatically compounded by procedural defects in the authorities’ decision-making. Spanish law requires the provision of free legal, interpretation, and translation services for all migrants (with insufficient economic means) facing “administrative or legal procedures which might lead to refusal of entry, to repatriation or expulsion from Spanish

⁵³ Ombudsman Annual Report, presented before the Spanish Parliament on October 8, 2001, section 3.1.2.3, “The Center for the Temporary Residence of Immigrants (CETI) in Las Palmas,” pp. 64-65.

⁵⁴ Human Rights Watch interview, Algeciras Acoge, Algeciras, October 15, 2001.

⁵⁵ Human Rights Watch interviews with migrants, Ceuta, July 28, 2001 and October 18-19, 2001.

⁵⁶ Ibid.

⁵⁷ Human Rights Watch interview, migrants at CETI, Melilla, November 7, 2001.

territory, and in all procedures regarding asylum.”⁵⁸ Migrants have the unequivocal right to an individualized judicial decision and judicial oversight in cases where they will be deprived of their liberty for more than seventy-two hours⁵⁹ and to appeal or challenge an order of expulsion, repatriation, or detention.⁶⁰ Spanish law also requires that migrants detained for violations of the foreigners’ law have access to information about administrative and judicial decisions pertaining to them in a language they understand.⁶¹

International and regional law, like Spanish law, require that migrants subject to immigration detention be guaranteed basic procedural rights to ensure that no person is detained arbitrarily, including the rights to counsel and interpretation or translation services. The detention of persons without an effective and prompt opportunity to be heard by a judicial or other authority and an opportunity to challenge the lawfulness of detention, including access to the assistance of legal counsel, is prohibited.⁶² International guidelines and domestic law on asylum procedures also require the provision of legal and interpretation and translation services necessary for applicants to submit a claim to the authorities,⁶³ as well as information on their rights in a language they understand.⁶⁴

⁵⁸ See Article 22(1) of Law 8/2000 (Regarding the Rights and Freedoms of Foreign Nationals Living in Spain and their Social Integration). See also Section 5.a, Articles 137(2) and 138(2) of the Regulations for the Application of Spanish Law on Foreign Nationals. Spanish law specifies that migrants should have access to counsel not only during legal procedures, but also during prolonged administrative detention. See Article 63(2) of Law 4/2000 (Regarding the Rights and Freedoms of Foreign Nationals Living in Spain and their Social Integration), amended by Law 8/2000, in combination with Section 2.a (Internment Centers for Foreigners), Article 128(1) of the law’s Regulations for the Application of Spanish Law on Foreign Nationals. See also Spanish law on internment centers (published in *Boletín Oficial del Estado*, no. 47, pp. 7681-7688), February 24, 1999.

⁵⁹ Article 62 of Law 8/2000 (Regarding the Rights and Freedoms of Foreign Nationals Living in Spain and their Social Integration) in combination with Section 2.a (Internment Centers for Foreigners), Article 127(1) of the law’s Regulations for the Application of Spanish Law on Foreign Nationals.

⁶⁰ See generally Law 8/2000, Article 21.

⁶¹ Article 63(2) of Law 4/2000 (Regarding the Rights and Freedoms of Foreign Nationals Living in Spain and their Social Integration), amended by Law 8/2000, in combination with Section 2.a (Internment Centers for Foreigners), Article 127(7) of the law’s Regulations for the Application of Spanish Law on Foreign Nationals. See also Spanish law on internment centers (published in *Boletín Oficial del Estado*, no. 47, pp. 7681-7688), February 24, 1999. Authorities are also required to provide detained migrants with information about the place in which they are being detained, including information on their rights. See Article 62 of Law 4/2000 (Regarding the Rights and Freedoms of Foreign Nationals Living in Spain and their Social Integration), amended by Law 8/2000, in combination with Section 2.a (Internment Centers for Foreigners), Article 129 of the law’s Regulations for the Application of Spanish Law on Foreign Nationals. See also Spanish law on internment centers (published in *Boletín Oficial del Estado*, no. 47, pp. 7681-7688), February 24, 1999.

⁶² Article 9 of the International Covenant on Civil and Political Rights (ICCPR) and Article 5 of the European Convention on Human Rights (ECHR) guarantee the rights to liberty and security of person and provide, among other things, that any person deprived of her or his liberty must have an *effective* opportunity to challenge the lawfulness of their detention before a court. In its General Comment No. 8, the United Nations (U.N.) Human Rights Committee interpreted ICCPR Article 9 to include “all deprivations of liberty, whether in criminal cases or in other cases such as...immigration control.” United Nations Human Rights Instruments, *Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies*, HRI/GEN/1/Rev.4, February 7, 2000, p. 88, para. 1. The European Court of Human Rights has ruled that migrants in detention enjoy the basic procedural guarantees enshrined in ECHR Article 5, including the right to effective review of the legality of their detention by a court. See *Dougoz v. Greece*, 40907/98, March 6, 2001. See also The U.N. Body of Principles for the Protection of all Persons under Any Form of Detention or Imprisonment (Body of Principles), adopted by U.N. General Assembly Resolution 43/173, December 9, 1988.

⁶³ Spanish Law 9/1994 (May 19) (published in *Boletín Oficial del Estado*, nos. 122 and 131), amending Law 5/1984 (March 26), Regulating Refugee Status and the Right to Asylum, Chapter Two, Article 4(1); Royal Decree 203/1995 (February 10) approving the Implementation Regulation [hereinafter “Implementing Decree”] of Law 5/1984 (March 26) regulating Refugee Status and the Right to Asylum, which was amended by Law 9/1994 (May 19) (published in *Boletín Oficial del Estado*, no. 52, 2 March 1995), Articles 8(4) (request made within Spanish territory) & 19(2) (requests made at border points); Office of the United Nations High Commissioner for Refugees, *Handbook on Procedures and Criteria for Determining Refugee Status* (Geneva: UNHCR, 1992), para. 192. For more detailed discussion of the international and regional standards on the treatment of asylum seekers and the ability of migrants arriving to Spain in the Canary Islands to access asylum, see Human Rights Watch, “The Other Face of the Canary Islands: Rights Violations Against Migrants and Asylum Seekers,” *A Human Rights Watch Report*, vol. 14, no. 1 (D), February 2002.

European and international law also set forth that all migrants have the right to an individualized determination regarding their expulsion.⁶⁵

As detailed below, Human Rights Watch researchers found the Spanish system lacking in each of these categories, creating an environment conducive to the kinds of arbitrary and abusive decision-making described above.

Access to Information, Legal Assistance, and Translation and Interpretation Services

Migrants, particularly undocumented or “illegal” migrants, arriving in Spain suffer from a serious lack of information, legal assistance, and translation and interpretation services. These problems are most pronounced for migrants in detention and those facing repatriation by *devolución* or technical expulsion in Ceuta and in some cities along the Andalusian coast, but plague other parts of the system as well.

Of the dozens of migrants interviewed by Human Rights Watch, none had a clear understanding of the immigration system, their rights, or their legal status in Spain. Migrants along the Andalusian coast and in Ceuta, for example, thought expulsion orders were work permits; in the Canary Islands migrants signed their own deportation orders, thinking they were new identity documents giving them a right to remain in Spain.

Hamid R.,⁶⁶ a migrant in Ceuta with an expulsion order was typical of many of the migrants we interviewed. He said he felt very “happy” and “lucky” because he was “going to Algeciras [mainland Spain] tomorrow” where he would meet up with his friend and find a job.⁶⁷ Hamid R. told Human Rights Watch that the police had explained that he should find a job or leave Spain within fifteen days and that he could spend a couple of days in Algeciras after taking the ferry. The police gave no further information about his legal status in Spain, his right to appeal the expulsion order, information about seeking legal counsel, or the long-term effect of the expulsion order on his rights in Spain and other Schengen countries.⁶⁸

Human Rights Watch examined Hamid R.’s documents, which were only in Spanish—a language he could not read. The documents consisted of a copy of the expulsion order, which granted him a forty-eight-hour period to appeal and fifteen days to leave Spanish territory. When Human Rights Watch read the expulsion order to Hamid R. with the help of an interpreter, it became clear that he had had no idea that a lawyer was necessary or even an option, much less how to go about seeking legal services or locating the appropriate forms to appeal his expulsion order.⁶⁹

Representatives of the Spanish government have told Human Rights Watch that any defects in the information provided to migrants are remedied by their lawyers.⁷⁰ Unfortunately, Human Rights Watch’s investigation suggests that even when access is provided or the migrants are advised of their opportunity to consult counsel, such confidence in the quality of migrants’ legal representation is misplaced. Numerous interviews with migrants, representatives of migrants’ aid organizations, lawyers, and officials indicated that lawyers are not always present at key moments in a migrant’s case and that even when present they frequently play a perfunctory role, merely signing off on paperwork.

⁶⁴ See Implementing Decree of Law 5/1984 (March 26) regulating Refugee Status and the Right to Asylum, which was amended by Law 9/1994 (May 19), Section 1, Article 5(1).

⁶⁵ See Article 13 of the ICCPR; Article 32 of the Convention Relating to the Status of Refugees; Protocol No. 4, Article 4 and Protocol No. 7, Article 1 of the ECHR; and Article 19(1) of the Charter of Fundamental Rights of the European Union. See http://www.europarl.eu.int/comparl/libe/elsj/charter/art19/default_en.htm#2 (accessed June 10, 2002).

⁶⁶ Not his real name.

⁶⁷ Human Rights Watch interview with twenty-two-year-old Algerian migrant, Ceuta, October 18, 2001.

⁶⁸ Ibid.

⁶⁹ Human Rights Watch interview, Ceuta, October 18, 2001.

⁷⁰ Human Rights Watch interview, Manuel Prieto, head of foreigners and documentation department, José García Santalla, chief of central foreigners unit (Foreigners and Documentation Department), and José Ramón Pérez García, chief of statistics, Spanish National Police (within the Ministry of Interior), Madrid, November 14, 2001.

Lawyers' roles appear to be particularly limited in *devolución* cases. An activist in Tarifa explained that in such cases, "We are told by lawyers that they cannot help migrants in any way."⁷¹ In Melilla, it appears that lawyers from the local bar association,⁷² which is responsible for providing migrants with *pro bono* legal services, are not even called to the police station to assist in cases of *devolución*.⁷³ When Human Rights Watch asked an officer of the Civil Guard along the Andalusian coast about legal and translation services for *devolución* cases, he responded that "[i]t is not necessary to know [the migrants'] language. . . . In other crimes [migrants] have the right to a lawyer and judge, but not for this one. If so, can you imagine?"⁷⁴

In Ceuta, the national police complete a standard form for *devolución*, which requests individual information such as names, surnames, document status, and dates.⁷⁵ Migrants do not, however, receive copies of these forms nor do they actively participate in their completion. Rather, interviews are cursory and meant purely for the administrative task of completing this form, not for advising migrants of their legal rights or options, nor for providing them an opportunity to seek meaningful access to counsel.⁷⁶

The 2001 Annual Report of the Ombudsman reports that its investigation of procedures in Ceuta revealed that "there was no reliable evidence of the presence of a lawyer"⁷⁷ during return proceedings. Furthermore, according to the report, "[i]n some cases the signature of a third person appears, who is neither the government official nor the interested party and which could be that of the lawyer, except that the signature is not identified with the name and registered number of the lawyer, and in other cases, there is no third signature whatsoever."⁷⁸ Not surprisingly, the Ombudsman recommended that the Spanish government should take immediate steps to ensure that:

the legal assistance required by law is an essential guarantee bound to the right to defense that may not be obviated or assumed under any circumstances and that record of the lawyer's presence must appear clearly with his identification in all of the formal proceedings.⁷⁹

Individualized Case Determinations

Human Rights Watch's investigation revealed that North African migrants—Moroccans and Algerians—found illegally entering Spain via the cities of Ceuta and Melilla or along the Andalusian coast are frequently

⁷¹ Human Rights Watch interview, Asociación Pro Derechos Humanos, Mario Arias, Tarifa, October 15, 2001.

⁷² The Spanish term *Colegio de abogados* translates as "bar association." Thus, although the *colegios* differ from bar associations in some countries in a number of ways, the term "bar association" is used throughout this report when referencing *colegio de abogados* lawyers. *Colegios de abogados* in Spain are not associations, but cooperative entities with an important role in the administration of justice. Among other things, they work directly with the Ministry of Justice in order to provide court-appointed lawyers and to supply legal aid lawyers for nationals and non-nationals when required. Only people who have a certified diploma of law may be a member of a *colegio* and only lawyers formally registered in a *colegio* (and paying taxes and meeting other *colegio* obligations) may work as lawyers in Spain. There is at least one *colegio* per province in Spain. Within the *colegios* there are a number of special departments, including a department on foreign affairs that deals with immigration matters. *Colegio* lawyers who have registered for a particular division are called when there is a need for their services. They perform the services on a *pro bono* (free) basis to the client, but are paid for their work by the *colegio*.

⁷³ Human Rights Watch interview, police officer, Spanish National Police, Melilla, November 9, 2001; Francisco Javier Arias Herrera, lawyer for the Colegio de Abogados, Melilla, November 9, 2001.

⁷⁴ Human Rights Watch interview, officer of the Civil Guard, Andalusian coast, October 16, 2001.

⁷⁵ Human Rights Watch interview, Luis Vicente Moro, government delegate for the autonomous city of Ceuta, Ceuta, October 19, 2001; Human Rights Watch interview, Spanish National Police in Ceuta, Ramón Capdevila, deputy chief of documentation, Ceuta, October 19, 2001.

⁷⁶ Human Rights Watch interview, Spanish National Police in Ceuta, Ramón Capdevila, deputy chief of documentation, Ceuta, October 19, 2001.

⁷⁷ Ombudsman Annual Report, presented before the Spanish Parliament on October 8, 2001, Section 3.1.2.2, "The Center for the Temporary Residence of Immigrants (CETI) in Ceuta," p. 64.

⁷⁸ Ibid.

⁷⁹ Ibid.

returned by *devolución* to Morocco in a manner that denies them meaningful access to an individualized case determination in violation of regional and international law.⁸⁰

Upon their arrest in locations such as Ceuta, Algeciras, and Tarifa, many migrants are held in police station cells⁸¹ only for the necessary period of time to process their paperwork and repatriate them by *devolución*—frequently less than twenty-four hours.⁸² A representative at the national police station in Melilla indicated that they use similarly swift procedures for *devolución*, explaining that migrants who come to register at the station “have to just wait at the station for the decision of the Government Delegate because if it is *devolución* it could happen in one hour.”⁸³ Spanish authorities routinely process entire groups of migrants at once, denying individual consideration of cases and consistently failing to provide meaningful translation or legal services to migrants. Moreover, current methods for assessing migrants’ nationality—a condition for their return—are unreliable, arbitrary, and primarily directed at one migrant group, Algerians.

The official attitude is that these migrants are in Spain illegally and should simply be returned as quickly and efficiently as possible, such as, on the next ferry or in groups by police van:

Officially we are doing our best to order migratory flows from Morocco to Spain. The idea is to stop illegal networks of pateras. The Civil Guard and police do as much as they can to refuse these people—to return them immediately.⁸⁴

As the chief of police in Algeciras stated in an interview with Human Rights Watch, the process of deporting migrants from Algeciras to Morocco is “very simple. We start the procedure for *devolución* and ask the sub-delegate of the government to sign off on the paperwork. We inform the migrant and then take them to the port, then Morocco, and then to the Moroccan police.”⁸⁵

Representatives of nongovernmental organizations working with migrants in Ceuta and along the Andalusian coast reported that above all deportations are quickly arranged and typically determined on a group basis. For example, according to Algeciras Acoge, the main migrants’ legal and social support organization in Algeciras, the main port city for ferries to and from Morocco from the Andalusian coast, migrants sent back to Morocco by *devolución* “all have one paper and are considered as a group. It is automatic; the police [when ordering their return by *devolución*] just change the name in the computer.”⁸⁶ Activists in Ceuta also described deportation practices that suggest migrants are being expelled to Morocco in the absence of individualized case determinations. One activist told Human Rights Watch that all of the documents for deportations to Morocco are processed together, regardless of whether there is one migrant or fifteen in the group, and that the “lawyer thinks

⁸⁰ Migrants who are found illegally entering Spain from Morocco may be returned to Moroccan authorities in accordance with a 1992 re-admission agreement signed between Spain and Morocco. However, because Morocco typically does not accept the return of non-Moroccan nationals, the practice of *devolución*, or immediate repatriation in accordance with the agreement, has been reserved for Moroccans, and for Algerians whom the authorities believe to be Moroccan.

⁸¹ According to the Ombudsman, a number of these facilities fail to meet minimum requirements for detention. Ombudsman Annual Report, presented before the Spanish Parliament on October 8, 2001, section 3.1.2.4, “Entry of undocumented persons via the Andalusian coastline,” pp. 65-66.

⁸² Human Rights Watch interview, Spanish National Police in Ceuta, Ramón Capdevila, deputy chief of documentation, Ceuta, October 19, 2001, noting that the police return groups of eighteen or more migrants to Morocco “easily six times a day;” Human Rights Watch interview, chief of police, Spanish National Police, Algeciras, October 15, 2001.

⁸³ Human Rights Watch interview, Melilla, November 9, 2001.

⁸⁴ Human Rights Watch interview, Eduardo de Quesada, deputy director of foreign affairs, Ministry of Foreign Affairs, Madrid, November 13, 2001. See also Human Rights Watch interview with Rocío Rodríguez Bayón, chief of cabinet, Office of the Government Delegate for the autonomous city of Melilla, Melilla, November 9, 2001. When asked to identify a clear and consistent determination process used in *devolución* cases or procedural guidelines meant to ensure the protection of migrants’ human rights, Chief of Cabinet Rodríguez explained that “[f]or the *devolución* process migrants have been forbidden entry to Spain. It’s not that the process has begun. They are not allowed to be in Spain and they know it.” Ibid.

⁸⁵ Human Rights Watch interview, chief of police, Spanish National Police, Algeciras, October 15, 2001.

⁸⁶ Human Rights Watch interview, Algeciras Acoge, Hassan Yetefti and Jose Villahoz Rodríguez, October 15, 2001.

it's his or her duty to just sign the papers at the end.”⁸⁷ There appears to be no official record of the migrants repatriated by *devolución*. Rather, “[o]nce they have been deported, they don’t exist. It is as though they’ve never come.”⁸⁸

Research indicated that for Algerian migrants these barriers to individualized case determination are further compounded by the absence of formal identification procedures in place to help determine the nationalities of individual migrants. Spanish authorities currently use informal means of labeling migrants as coming from a specific country, making nationality determinations on the basis of physical appearance, linguistic abilities, and the personal opinions of the Moroccan border police who have the closest contact with migrants in Spain. Because of Morocco’s resistance to readmitting non-Moroccan nationals, the practice appears to most affect Algerian migrants whom the police determine to be “Moroccan.”⁸⁹

Spanish authorities in Ceuta and Melilla and along the Andalusian coast repeatedly told Human Rights Watch that many migrants who say they are Algerian are actually Moroccans trying to gain illegal entry to Spain. The following statement by an officer of the Civil Guard on the Andalusian coast is a prime example:

It is clear [migrants who say they are Algerian] are lying. The police are not dumb. If there are sixty men in a patera and one says he’s Algerian then okay, but all sixty? Well. You don’t learn this in the academy; you learn it in everyday life.⁹⁰

When Human Rights Watch asked if it was possible that migrants who are Algerian were ever mislabeled Moroccan and sent back to Morocco by the process of *devolución*, the officers admitted that:

[y]es, maybe a mistake can be made, but we give them food. Other countries don’t. Spain is not economically prepared to receive all these migrants. Do you remember Australia? They wouldn’t even let them enter. But in Spain we would have let them in and given them food. The normal—or better—thing would be to have a judicial process, but that is not possible.⁹¹

The Government Delegate in Ceuta expressed concern that establishing migrants’ nationality is complicated by the sale of false passports. Consequently, the task of ascertaining whether a migrant is Algerian or Moroccan falls to the Spanish police “experts” in Ceuta: “[they] have to find out—that is their job—if they are from Algeria. If there is any doubt we take them to the Moroccan authorities and with their help we can establish whether they are Moroccan or Algerian. In 90 percent of the cases it is confirmed that they are Moroccan.”⁹² Similarly, the deputy chief of documentation at the national police station in Ceuta told Human Rights Watch that police station interpreters determine these migrants’ nationality by “talk[ing] to them and listen[ing] to their accents or dialects. If anyone suspects they are Moroccan we try to send them back to Morocco. The Moroccan police then interview them and if they think they’re Moroccan, accept them back.”⁹³

Human Rights Watch is concerned about the absence of a formal process—with appropriate guidelines for police and other responsible immigration authorities—to make determinations about nationality. The informal identification procedures described above are unreliable, arbitrary, and possibly discriminatory. As the situation currently stands, Algerians may be incorrectly labeled as Moroccan and sent back to Morocco without any opportunity to prove their nationality.

⁸⁷ Human Rights Watch interview, Tomás Partida, Ceuta, October 17, 2001.

⁸⁸ Ibid.

⁸⁹ See also explanation in footnote 80.

⁹⁰ Human Rights Watch interview, officers of the Civil Guard, Andalusian coast, October 16, 2001.

⁹¹ Ibid.

⁹² Human Rights Watch interview, Luis Vicente Moro, government delegate for the autonomous city of Ceuta, Ceuta, October 19, 2001.

⁹³ Human Rights Watch interview, Spanish National Police in Ceuta, Ramón Capdevila, deputy chief of documentation, Ceuta, October 19, 2001.

Repatriation of migrants by *devolución*, as it is currently practiced, does not appear to afford migrants an individualized process with the necessary procedural guarantees set forth in domestic, regional, and international law. Rather, Human Rights Watch is concerned that Spain's *devolución* policy is implemented such that migrants are almost immediately returned to Morocco on the basis of an inadequate decision process for their removal. This process fails to provide individual migrants with meaningful access to procedural guarantees such as legal and interpretation services, information on their rights, and, in the case of Algerian migrants, a fair and predictable process for assessing their identity and nationality.

Appeals

Although under Spanish law migrants have the right to appeal an order for their deportation,⁹⁴ the practical obstacles to mounting a successful appeal make it virtually impossible for migrants to exercise this right.

Human Rights Watch's research revealed, for example, that in Ceuta few migrants are aware that their documents are expulsion orders, much less that they have the right to appeal the orders. They lack sufficient knowledge about their legal status and about ways to seek legal aid. Moreover, it appears that in some cases police issue migrants their documents after the forty-eight-hour appeal period has passed or at the start of a weekend, when seeking legal services or filing an appeal would not be possible.⁹⁵ When Human Rights Watch raised these concerns with the Government Delegate in Ceuta, he informed us that there are many "law offices in Algeciras to take on [expulsion] cases. [The Algerians] have more than enough time to lodge an appeal within forty-eight hours. They already have the papers for appeal with them."⁹⁶

Lawyers working with migrants in both Ceuta and Melilla indicated that even if migrants realize they can and should appeal an expulsion order, they still face barriers to meaningful review.⁹⁷ A lawyer for the Melilla Bar Association, for instance, explained that in Melilla "lawyers appeal the cases in forty-eight hours but it is not a real appeal. It is just a way to say you do not agree. The police don't even answer; they just continue with the process as before."⁹⁸

The procedure followed for appeals in cases of *devolución* further highlights the futility of such efforts. In Ceuta, for example, if a migrant appeals his repatriation by *devolución*, he will be transferred to the border where he must wait an hour or so for an answer from the Government Delegate on his application to appeal.⁹⁹ The appeal is purely administrative and is considered by the same authority that ordered the *devolución* of the migrant in the first place.¹⁰⁰

⁹⁴ Law 8/2000, Article 21.

⁹⁵ For example, on the day that Human Rights Watch interviewed Hamid R. (see footnote 67) and his friend—October 18, 2001—migrants throughout the church-run facility where Hamid R. and his friend were staying told our researchers that fourteen Algerians would be going to Algeciras the next day. The men had just received their expulsion documents that day and had not yet received ferry tickets for the mainland. The plan was for them to meet in front of the police station in Ceuta the following morning, at which time the police would take them to the ferry and ensure their passage to the mainland. Yet, Hamid R.'s and his friend's papers were both dated October 17, 2001, leaving only part of a Friday afternoon to locate a lawyer and file an appeal against their expulsions. Human Rights Watch interview with twenty-two-year-old Algerian migrant, Ceuta, October 18, 2001.

⁹⁶ Human Rights Watch interview, Luis Vicente Moro, government delegate for the autonomous city of Ceuta, Ceuta, October 19, 2001.

⁹⁷ See e.g., Human Rights Watch interview, Lucrecia de Africa Benzo Montilla, lawyer for the Colegio de Abogados, Ceuta, October 18, 2001, describing practical and logistical problems migrants face when attempting to appeal.

⁹⁸ Human Rights Watch interview, Francisco Javier Arias Herrera, lawyer for the Colegio de Abogados, Melilla, November 9, 2001.

⁹⁹ Human Rights Watch interview, Spanish National Police in Ceuta, Ramón Capdevila, deputy chief of documentation, Ceuta, October 19, 2001.

¹⁰⁰ Ibid.

Moreover, the appeal has no effect on the process of deportation without a separate judicial order suspending deportation until a decision on the appeal has been reached.¹⁰¹ As the head of the foreigners and documentation department of the Spanish National Police headquarters in Madrid Manuel Prieto observed, appealing in cases of “*devolución* is more difficult because of the length of time.”¹⁰² In fact, it would be virtually impossible for a migrant to lodge an appeal and receive a judicial suspension of deportation pending determination in less than the forty-eight hours it typically takes to repatriate North Africans to Morocco by *devolución*. Consequently, the technical right to appeal an order for *devolución* is merely symbolic.

CONCLUSION AND RECOMMENDATIONS

As highlighted in the examples above, the fate of migrants arriving in Spain frequently depends on their point of entry. Spanish authorities responsible for implementing Law 8/2000 and its regulation appear to interpret and apply the law in the way that they feel makes the most sense for their particular locality, without regard for requirements of consistent, predictable, and non-arbitrary implementation of the law. Serious violations of migrants’ rights result.

For example, the authorities in Ceuta address the migrant problem by quickly processing migrants’ expulsion documents so that they can be transferred to mainland Spain. The Melilla authorities address the problem by sending some groups of migrants to the peninsula with valid work and residence permits, sending others to the peninsula where they are held in internment centers prior to expulsion, and repatriating to Morocco by *devolución* those classified as Moroccan. Authorities in the Canary Islands address their local migration problem by detaining all undocumented migrants arriving to its shores by *patera*, expelling those they can and releasing the others onto the streets of Las Palmas after their detention period has lapsed.

Research also indicated that fundamental procedural rights guaranteed to migrants under the law, such as the right to counsel or to appeal an order for deportation, are in many cases only given symbolic effect. Moreover, migrants are largely ill-informed about their rights under the law and have limited access to meaningful legal or interpretation services.

Arbitrary decision-making and the tendency to deny migrants their basic procedural rights are exacerbated by the excessively broad powers some authorities possess. The discretion exercised by the Spanish National Police and the government delegates in Ceuta and Melilla, in particular, yields disparities in implementation of Law 8/2000, consequently raising serious concerns about Spain’s compliance with domestic, regional, and international law prohibiting arbitrary and discriminatory treatment and requiring individualized case determinations.

Despite awareness of these concerns, there has been no indication from the responsible government ministries in Madrid that serious efforts are being made to centralize interpretation and application of Law 8/2000. Human Rights Watch calls on the Spanish government to:

- take prompt measures to address the deficiencies of coordination among central, regional, and local authorities in order to ensure the fair and consistent interpretation and application of Law 8/2000 and its regulation;
- ensure that the foreigner’s law is applied in a nondiscriminatory manner, including the creation of clear guidelines for identification procedures;

¹⁰¹ Human Rights Watch interview, Manuel Prieto, head of foreigners and documentation department, José García Santalla, chief of central foreigners unit (Foreigners and Documentation Department), and José Ramón Pérez García, chief of statistics, Spanish National Police (within the Ministry of Interior), Madrid, November 14, 2001.

¹⁰² Ibid.

- provide all arriving migrants and asylum seekers with information pamphlets on the Spanish immigration procedure and their rights under Spanish, regional, and international law in a language they understand;
- provide interpreters as and when needed basis to convey information to migrants about their rights and status;
- provide training on immigration and asylum law for lawyers representing migrants and ensure that migrants have a meaningful opportunity to seek legal assistance and to secure adequate legal representation for all processes governing their rights and status;
- ensure that every migrant subject to a return procedure in Spain receives a full and fair individual determination with respect to repatriation, deportation, or expulsion;
- devise and implement monitoring mechanisms capable of evaluating and limiting overly broad decision-making powers exercised by Spanish law enforcement and immigration officials; and
- establish appropriate complaints mechanisms available to migrants, nongovernmental and humanitarian organizations, lawyers, and others to ensure that migrants are treated in a fair, consistent, and nondiscriminatory way, and that their treatment is subject to regular monitoring.

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